

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES,

Plaintiff,

-v-

8:22-CR-414

KRISTOPHER FETTER,

Defendant.

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SENTENCING TRANSCRIPT
BEFORE THE HONORABLE FREDERICK J. SCULLIN

October 3, 2023
100 South Clinton Street, Syracuse, NY 13261

For the Plaintiff:

OFFICE OF UNITED STATES ATTORNEY
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Room 340
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BY: **JEFFREY C. STITT, ESQ.**

For the Defendant:

LAW OFFICES OF DEAN C. SCHNELLER
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BY: **DEAN C. SCHNELLER, ESQ.**

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1 (Open court. Time noted: 10:14 a.m.)

2 THE COURTROOM DEPUTY: The matter is a sentencing in
3 case United States versus Kristopher Fetter, case 8:22-CR-414.

4 Counselors, your appearance for the record, please.

5 MR. STITT: Jeffrey Stitt on behalf of the United
6 States. Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. SCHNELLER: Good morning, your Honor. Dean
9 Schneller on behalf of the defendant, Mr. Fetter.

10 THE COURT: Mr. Schneller and Mr. Fetter.

11 Mr. Fetter, as you are aware, this matter's on for
12 sentencing today. The Court has received and I've considered
13 all the pertinent information relevant to sentencing, such as
14 the Presentence Investigation Report, its addendum, the plea
15 agreement, and submissions by counsel. Thank you, counsel, for
16 your submissions. I've also reviewed the sentencing guideline
17 manuals and determined how they may apply to you and the various
18 factors outlined in Title 18, Section 3553(a).

19 Now, with respect to the Presentence Investigation
20 Report, Mr. Schneller, I understand you have a concern about
21 some of the scoring?

22 MR. SCHNELLER: Yes, sir.

23 THE COURT: Do you wish to be heard further on that?

24 MR. SCHNELLER: Yes, your Honor, just briefly.

25 We believe the enhancement for the co-pilot or

1 navigator is inappropriate based on the facts of this case. As
2 we know, there's no definition of co-pilot or navigator in the
3 sentencing guidelines, so we can turn to the plain language. We
4 cited several cases which define those plain language terms of
5 pilot or navigator, and there's a consistent theme where they
6 all suggest for that enhancement to apply, the defendant has to
7 either steer or navigate the boat in the common sense
8 application of those definitions.

9 THE COURT: As a pilot. As a co-pilot, not
10 necessarily.

11 MR. SCHNELLER: And in this case, the sole facts that
12 the PSI relays are that he essentially held the boat in place as
13 it launched on the dock and had probably held some ropes as it
14 was loaded into a truck. So with those -- that limited factual
15 basis, even if we use the co-pilot standard, that's something
16 less. That's really a passenger, not a navigator or a co-pilot.
17 And the fact that it was a friend's boat in an area that the
18 friend has commonly used with appropriate signage suggests that
19 it wasn't a middle of the ocean scenario where he needed some
20 assistance from Mr. Fetter.

21 So if -- we believe that this enhancement applies, it
22 essentially applies to everyone who was sitting in a car, sitting
23 in a boat, as opposed to what Congress intended, which was
24 someone who's actually helping to facilitate the movement.

25 THE COURT: All right. What's your reply?

1 MR. STITT: Your Honor, the facts as the government
2 set forth in its submission, as well as the PSIR establish that
3 the defendant was not simply sitting idly in the boat. By
4 counsel's own assertions just now, the defendant was assisting
5 in any manner that would establish, in our position, by a
6 preponderance of the evidence, that he was a co-pilot and we
7 believe the enhancement is appropriate.

8 THE COURT: I would agree.

9 I believe the enhancement does apply, Mr. Schneller.
10 He did assist in the transportation of the product across the
11 waterway and he did assist in the -- admitting the boat in the
12 harbor and tying it up and so forth, so I consider that as
13 sufficient evidence of fulfilling the requirements of that
14 enhancement.

15 Anything else you wish to address in the Presentence
16 Investigation Report?

17 MR. SCHNELLER: Your Honor, this -- I apologize, I
18 did not include this in my sentencing memorandum, but I am aware
19 that as of November 1st, there are some further reductions that
20 are impending based on safety valve eligibility. I know we're
21 three -- two, three -- four weeks prior to November 1st, so
22 they're not yet in effect. So my only hope, and I'll be making
23 that argument later on, is if your Honor's considering a
24 departure -- a downward departure, that we consider the fact
25 that had this sentencing occurred several weeks from now, Mr.

1 Fetter would have likely availed himself of at least a two point
2 reduction.

3 THE COURT: I will consider all of those factors.

4 MR. SCHNELLER: Okay. Thank you.

5 THE COURT: Anything else on the Presentence
6 Investigation Report?

7 MR. SCHNELLER: No, your Honor.

8 THE COURT: All right. Well, the government has no
9 objection, as I understand, correct?

10 MR. STITT: That's correct, your Honor.

11 THE COURT: All right. The Court will therefore
12 adopt the factual information and the guideline applications as
13 contained in that report. Therefore, the total offense level is
14 25, the criminal history category is III, and the guideline
15 imprisonment range is 70 to 87 months.

16 Do you wish to be heard further before the Court
17 imposes sentence?

18 MR. SCHNELLER: Yes, your Honor.

19 As laid out in our papers, your Honor, Mr. Fetter is
20 a 36-year-old disabled veteran. He has honorably served his
21 country doing some really serious heavy duty military work
22 overseas. Unfortunately, he did come back with PTSD and various
23 demons that he was unable to overcome on his own through therapy
24 and he did turn to drugs for several years after he returned.
25 That was unfortunate and led to various toxic relationships and

1 toxic actions that Mr. Fetter is, frankly, embarrassed by and
2 really, now with the benefit of 12 months of a clear head in
3 custody since he's been arrested, really wants to turn his life
4 around.

5 Back in the rear of the court, we do have his mother,
6 his cousin, and his sister. We also provided numerous character
7 letters, which --

8 THE COURT: I have those letters and I reviewed them.
9 Thank you.

10 MR. SCHNELLER: -- which show that he's not a lost
11 cause, that he's not someone we need to throw away, but, rather,
12 he's someone that -- he needs this opportunity to have
13 appropriate guardrails. We understand that there will be a
14 confinement punishment, but we are strongly requesting a
15 significant downward departure so that he can serve his time,
16 but then get his life together with appropriate guardrails
17 through post-release supervision, drug treatment, employment,
18 and everything else that he needs to do.

19 Frankly, we can tie all of his criminal history to
20 that addiction. And, now, in my personal dealings, he's been
21 exceptionally polite, exceptionally cooperative, he's accepted
22 full responsibility for his conduct. He did it very quickly.
23 He wants to turn his life around. And he may say that this
24 arrest, had it not occurred, may have saved his life because he
25 was on that bad path and now he's taken the consequences for it,

1 but he wants to right that ship.

2 I'll also recognize, your Honor, that the substance
3 that he was carrying, THC -- a concentrated hash oil, in its
4 basic form, is legal in Canada, is legal in New York State, is
5 legal in the reservation, and there appears to be a federal
6 trend towards either decriminalization or rescheduling, so we
7 just wanted that recognition of what the substance was.

8 So for all these reasons, we are respectfully
9 requesting a downward departure and a sentence in our sentencing
10 memorandum of 36 months with post-release supervision.

11 THE COURT: Mr. Fetter?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: What do you have to say?

14 THE DEFENDANT: I just -- I really screwed up and --

15 THE COURT: Would you pull the microphone in front of
16 you? I can't understand you.

17 THE DEFENDANT: I just feel like I really screwed up
18 and I got in with the wrong crowd and had to support my habit.
19 And being sober now and stuff, I feel a lot better. And I could
20 have, you know, told on my co-defendant or whatever and gotten
21 out of this, but I'm done with that, so I just want to do my
22 time and pay my debt and move on with life and do the right
23 things, sir.

24 THE COURT: Well, you've had many opportunities here
25 to straighten yourself out and it wasn't until this occasion now

1 that you feel you can straighten yourself out; is that right?

2 THE DEFENDANT: We're getting there, sir. We're
3 getting there. Albany County was pretty rough. It's still
4 pretty rough. So I've never been in a situation like this and
5 sometimes it takes a disaster to snap you out of something and
6 make you see what's what and who's who and --

7 THE COURT: Mm-hmm.

8 THE DEFENDANT: -- you know, what's important.

9 THE COURT: The government?

10 MR. STITT: Your Honor, the government would largely
11 rest on its submissions. I would note, as we've stated in our
12 submissions, that the defendant is within criminal history
13 category III. As the Court points out, the defendant has had
14 several opportunities, beginning in 2010 when he first began
15 committing crimes, to try and right this ship. His words today
16 would ring hollow in our mind. He's had several opportunities
17 over the last 13 years and his crimes have essentially been in
18 an escalation or crescendo to today.

19 He had assisted in transporting controlled substances
20 across international waters that were approximately \$1.2 million
21 in value, so the crime that he committed is serious. His
22 history has -- there's been a track record of progression and I
23 think a guideline sentence in this case is appropriate.

24 Thank you, Judge.

25 THE COURT: Thank you.

1 Well, the Court, as I stated, has reviewed your
2 entire file thoroughly. Now, Mr. Fetter, you have had many
3 opportunities to try to straighten yourself out. At your age
4 now, hopefully you are beginning to see the light because there
5 aren't any further chances out there.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: After reviewing the facts of this case
8 and submissions by counsel, I find that a non-guideline sentence
9 is sufficient to meet the goals of the sentencing statutes. I'm
10 recognizing the fact that you have had military service and you
11 served your country honorably. I also recognize the seriousness
12 of the offense and the many times you've been involved with the
13 law and kept going and going until it got worse and worse. If
14 you put that together, upon your plea of guilty to Count #1 of
15 the indictment, it is the judgment of this Court that you're
16 hereby committed to the custody of the Bureau of Prisons for a
17 period of 58 months. That's below the sentencing guidelines.

18 Now, I'm going to recommend that you participate in
19 substance abuse treatment while incarcerated and also mental
20 health treatment. But upon your release from imprisonment, you
21 will be placed on supervised release for three years during
22 which time the standard conditions adopted by this Court will
23 apply. Furthermore, specific conditions will apply.

24 Do you have a copy of those, counsel?

25 MR. SCHNELLER: Yes, your Honor.

1 THE COURT: Have you reviewed them with your client?

2 MR. SCHNELLER: Generally. I can't say I read them
3 verbatim, but I explained the concepts.

4 THE COURT: Okay. Do you waive the reading of them
5 at this time in their entirety?

6 MR. SCHNELLER: Yes, sir. Yes, your Honor.

7 THE COURT: The special conditions will require you
8 to partake in treatment and follow the direction of your
9 treatment providers. If you were to violate any of the terms
10 and conditions of that treatment or supervised release, for that
11 matter, or probation, you'll be brought back here and sent back
12 to prison. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: This is an opportunity. I gave you a
15 lesser sentence than you would normally receive. A lesser
16 sentence. Most importantly is that you address your issues and
17 change the direction your life has taken. If you do can that,
18 that's good. If you can't, you'll be back here and back in
19 prison. It's as simple as that.

20 THE DEFENDANT: Yes, sir. I understand.

21 THE COURT: All right. There's a special assessment
22 of \$100, which is due at this time. The Court will not impose a
23 fine. You do have a right to appeal this sentence. You may
24 consult with your attorney concerning that right of appeal. Any
25 appeal must be filed within 14 days of the date the judgment is

1 entered here.

2 You are remanded to the custody of the United States
3 Marshals in accordance with the terms of this sentence.

4 So in other words, Mr. Fetter, it's up to you what
5 you do with your life from this point on.

6 And for your family in the back of the room, it's
7 important that he has your support, but do not enable him. If
8 he does something wrong, you call him on it. If he's not doing
9 what he's supposed to be doing, you call him on it. It's going
10 to help him straighten out. Please do that. All right?

11 Anything further to put on the record?

12 MR. SCHNELLER: Your Honor, in light of his mother's
13 residence in the north country, we'd request a recommendation to
14 the Bureau of Prisons that he be housed in a facility as close
15 as possible to Plattsburgh.

16 THE COURT: I will recommend that, but most
17 importantly is that he gets the treatment that he needs while
18 incarcerated, too, in the Bureau of Prisons, so I want both of
19 those things considered by them.

20 MR. SCHNELLER: Thank you, Judge.

21 THE COURT: Anything further from the government?

22 MR. STITT: Your Honor, I would just note that the
23 special conditions that you imposed are reasonably related to
24 the defendant's conduct and his history based on his substance
25 abuse. I understand your Honor had detailed that to some degree

1 and I just wanted to state that on the record. As you're well
2 aware, the Second Circuit is always asking us to put more and
3 more on the record at the time of sentencing, so I just wanted
4 to make sure.

5 THE COURT: That's fine. Thank you.

6 MR. STITT: Thank you, Judge.

7 THE COURT: I appreciate that.

8 All right. Is there anything further now?

9 MR. SCHNELLER: No, your Honor.

10 THE COURT: All right. Thank you.

11 THE COURTROOM DEPUTY: Court is adjourned.

12 (Time noted: 10:29 a.m.).

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CERTIFICATE OF OFFICIAL REPORTER

I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR, Official U.S. Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 12th day of April, 2024.

s/ Hannah F. Cavanaugh

HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR
Official U.S. Court Reporter